

THE  
American Constitution

A SPEECH DELIVERED BY

HON. SAMUEL W. McCALL

OF MASSACHUSETTS, AT

JAMESTOWN, ON SEPTEMBER 17, 1907, ON THE OCCASION  
OF THE ONE HUNDRED AND TWENTIETH ANNIV-  
VERSARY OF THE ADOPTION OF THE  
NATIONAL CONSTITUTION BY  
THE CONVENTION OF

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# THE AMERICAN CONSTITUTION

BY HON. SAMUEL W. McCALL

(Following is the full text of the speech which Congressman McCall delivered at Jamestown on September 17, 1907, on the occasion of the one hundred and twentieth anniversary of the adoption of the National Constitution by the convention of 1787. Mr. McCall has kindly furnished us the manuscript, which is entitled to rank as part of the permanent political literature of the American people. We say this advisably, for we can recall no discussion of the Constitution in recent years which more perfectly conjoins the wisdom of the philosopher with the experience of the man of affairs.—Editor of *The Inter-Nation*.)

I have listened with deep interest to the eloquent speech of my friend, the president of the Exposition,<sup>1</sup> and to the learned address of the distinguished jurist and statesman who has just spoken.<sup>2</sup> It is most fitting that, in the celebration of the founding of Virginia, a day should be set apart for doing honor to the national constitution, in the formation of which she bore so large a part. That great Virginian, that great American rather, George Washington, was chiefly responsible for the existence of the convention and presided over its deliberations. The "Virginia plan" presented by Edmund Randolph was made the basis of its work. James Madison and the other delegates from this state performed a part which history delights to recall, and the debt of the country for Virginia's work in the great convention is beyond all calculation. What place is there in all America where the anniversary of the final passage of the Constitution in the national convention could more fittingly be observed than upon the spot where Virginia was born, where the air is still vital and throbbing with the eloquence of those great voices of another time?

Coming, as I do, from the Commonwealth of Massachusetts, which for more than two centuries had a development parallel with your own, which was closely associated with you in all the glorious events of the revolution and which might indeed be fitting-

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<sup>1</sup> Hon. H. St. George Tucker.

<sup>2</sup> Hon. Alton B. Parker.

ly called the twin sister of Virginia, it is with peculiar pleasure that I take part on this occasion. The settlements at Jamestown and at Plymouth were near each other in point of time, and their influence, gradually radiating from each center through the surrounding wilderness, at last blended together, and became the most potent force in the establishment of civil government in America, in achieving our independence, and in forming the national Constitution.

Perhaps no other political document has received the degree of attention that has been bestowed upon the Constitution. It has been lauded by great orators, expounded by great lawyers, and interpreted by authors almost without number. It has been authoritatively construed by as august a judicial body as has been known in history. Whatever is new about it is apt to be doubtful. On this occasion I shall not traverse the broad and well known field, but I shall attempt to bring to your attention a few considerations, well worn no doubt, which seem to me most timely, in view of the special trend of the day.

I know it is sometimes said that the Constitution is becoming antiquated and outgrown. It is doubtless true that since the Spanish war authoritative efforts have been made to free the government from its limitations, in order that we might prosecute a new and ambitious policy—a policy which, now that we have embarked upon it, I think all thoughtful and patriotic citizens wish we were well rid of. We have here and there, scattered over the globe, little pro-consuls, governing despotically in the American name. Ambitious statesmen chafe under its restraints, and enterprising people, desirous of embodying in the policies of the nation every “ism” that may be floating upon the air, would have a style of constitution which would change with every autumn and spring. No doubt there are those who think it a fitting time for us today to “come to bury Cæsar, not to praise him.”

But the principles of the Constitution were never more vital, and its limitations never more necessary to real progress and liberty than at this very hour. If its terms have been forgotten or violated, the result has not been such as to tempt us to repetition. It has endured the storm and stress of more than a century; it has successfully met every crisis, and under it the nation has had a growth beyond all parallel in history. It satisfied every demand of our vigorous and growing youth, and as well responded

to every need of the splendid maturity of our people. It has stood the strain of war. For more than a hundred years it permitted us, without usurpation, to do everything that our national well-being required to be done. If it has thwarted some adventurous designs and set at naught the crude and callow projects of inexperience, that was one of the things it was supremely designed to do. We need not claim that it is perfect, but it is probably more nearly perfect than any constitution we should adopt today. Important amendments to it have been proposed, which were afterwards shown to be useless. Seven years ago, for instance, a majority of the House of Representatives voted for the so-called anti-trust amendment, and yet the Sherman anti-trust statute has been proven so drastic, that the attorney general has formally recommended that it be made less strong, and drastic as it is, it is probable that it does not exhaust the constitutional powers of Congress upon the subject.

But if amendments are desirable there is a way provided for their adoption. And upon this day which is the anniversary of the farewell address, as well as of the final action of the convention, we may well ponder upon those weighty words spoken by that great soldier and statesman, to whom more than to any other man we are indebted for our independence and our national government. "If in the opinion of the people," said George Washington one hundred and eleven years ago today, "the distribution or modification of the constitutional powers be in any particular wrong, let it be corrected by amendment in the way the Constitution designates. But let there be no change by usurpation; for, though this in one instance may be the instrument of good, it is the customary weapon by which free governments are destroyed. The precedent must always greatly overbalance in permanent evil any partial or transient benefit which the use can at any time yield."

But it is proposed to expand the Constitution by "construction." So far as the rules of interpretation are concerned, they should of course be applied, not with the technical narrowness employed in construing penal statutes, but with the liberality befitting the organic act of a government in which general terms must necessarily be used. But if under the pretence of exercising a granted power a power not granted is put in force, then we should have substantially that usurpation which would fall under the denunciation of George Washington. It is proposed, for instance, to construe the power to regulate

commerce between the States so as absolutely to prohibit it, and thus to exercise jurisdiction over the processes of production within the limits of a State. Control of every country road and every city street over which a letter carrier may travel is to be assumed under the power to establish post roads, while the taxing power is to be invoked, not for the purpose of raising revenue for the government, but for the purely social purpose of limiting the size of fortunes. Other threatened infractions, if possible more culpable, might also be mentioned. I am familiar with the triumphant *ad captandum*, made for want of argument to serve as a reply to such criticisms. It is that they are urged in favor of corporations. But how does it happen that so far as governmental favors are concerned, the corporations derive their peculiar juice and fatness, not under State enactments, but under the subsidies of national laws. And, unless it be for their interest to do so, why is it also that many great corporations—common carriers and insurance companies—have been pressing for national rather than State control?

What is the grand distinctive thing about the American Constitution? Mr. Gladstone has said that it "is the most wonderful work struck off at a given time by the brain and purpose of man." Making allowances for Mr. Gladstone's rhetorical way of putting things, he probably did not mean that the framers enunciated for the first time the principles of the Constitution, but that at a given time many great principles were assembled together as the frame of the Government of what was destined to be a great nation. In that respect it was unique. The constitutions of other nations had almost invariably been unwritten, had been gradually evolved from history, and were the slow and ripened products of time. But the important provisions of our Constitution were not created when the Constitution was written. They were not novel and untried, but had been worked out in the bitter struggle of centuries between despotism and liberty. Many of them had been fashioned in the history of other nations, and chiefly in the growth of the British government. Some of them had existed in our colonial charters, and in the constitutions adopted by the States during the revolutionary period. But it was a wonderful work performed at a given time when our Constitution makers collected those immortal principles and wrote them together in a single document as the basis of a nation.



I know it has been said that the founders of the Dutch Republic did substantially the same thing when they established the union of Utrecht by a written constitution. But that union was a mere treaty between the Dutch states and, as an eminent critic has pointed out, it formed no central authority at all, but only a debating society. Its action was binding upon no state which did not subsequently accept it. It had even less authority than the confederation which preceded our Constitution.

To my mind the distinctive thing about the American Constitution, which indelibly stamps its character, is that it embodied an experiment before that time unknown, and established a government upon the corner stone of the individual, making him for certain essential purposes of freedom superior even to the Government itself. In the other nations, whatever liberty there was had commonly appeared in the form of concessions and grants from sovereigns to the people. The kings ruled by a claim of divine right. Whatever of liberty the people enjoyed came by gift from the king, and whatever authority was not granted by the king remained vested in him. But the American Constitution reversed all that. It proceeded from the people. The Government which it established was one of limited powers. Every power that it possessed was delegated by the people, and every power not granted was expressly reserved to the people or to some of the governmental organs which they had previously established. The original Constitution was framed upon this theory, but that there might be no doubt about it, at least six of the States, and among them Virginia and Massachusetts and New York, accompanied their ratification by resolutions making an express construction that all powers not granted were reserved; and the first Congress submitted among the amendments embodying the bill of rights, the Tenth Amendment, declaring that "the powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively or to the people." This amendment was immediately ratified and placed in the Constitution. It is there even more impressively than if it had been made a part of the original instrument, and it deals a death blow to the theory that our government has about it any "divine right" or any "inherent power," or any power that is not contained in the express grant. To my mind therefore the striking thing in the American Constitution, which differentiates it from the previously formed constitutions of all other

nations, is the manner in which it imposed limitations upon government, recognizing that all power originally resided in the people, and that no government had any species of authority over them which they did not expressly grant.

The framers of the Constitution knew or cared nothing about the consciousness of a State or of a world. The only freedom that they had knowledge of was individual freedom, and to that freedom they knew that government had often been the most deadly foe. The problem that they attempted to solve was to organize a State in which stability and order should be reconciled with liberty. Their prime purpose was to secure the wellbeing of the individual, which was the highest conscious unit they knew anything about. They believed that it was for individual men that States were founded, for those who were governed that governments were ordained. History up to that time had been chiefly made up of the doings of governments under which the masses of mankind were permitted to stand afar off and see the great central figure perform, see him engorged with power, surrounded by his creatures pandering to his whims, in order to buy themselves new honors, while the toiling millions of men and women were preyed upon and despoiled, with no right to liberty or even life itself, except by the grace of the sovereign. The people existed for the government and not the government for the people.

In the little island from which they came their fathers were near enough to the throne to suspect at first, and then to know that the king was a man like the rest of them, and by steady and resistless struggles they were able to secure more and more of the powers of the government in the people, until at last their sovereign was reduced almost to a fiction and became a mere influence rather than a power. But abstractly, the government of England is without limitation. The powers granted to Parliament hedge about and limit the king, but what limitation is there upon the power of Parliament? More firmly even than the liberty of the people of England did the Constitution establish the individual freedom of our own people. It safeguarded the citizen in certain great essentials against the republic itself and against the tyranny of the majority, even when expressing itself through the agencies of organized government.

Has it worked badly, this system of protecting the individual of the million, this letting in the light of freedom to warm and

stimulate his faculties? Man is the greatest force we know of upon the planet, and the genial influence of freedom has kindled his powers into action, has brought the faculties of millions into full play. It has not limited ambition to the few, but has made it free to all. It has stimulated invention, industry, enterprise, and is chiefly responsible for the astounding development the world has seen since the establishment of the American Constitution.

I desire to speak to you at some greater length upon a subject to which I have alluded, upon the federated character of our system, and the relation between the national and the local governments. Our somewhat complex system was the logical result of the conditions existing after the Revolution; I say complex because I do not know where to find such another double allegiance, if I may call it such, where two governments divide between them the exercise of sovereign powers over the same territory. There are instances where one government delegates certain authority over its soil to another, and where there may be an inferior and subject government, the power of which is revocable by the imperial state, but such systems are not parallel with ours.

Our Constitution makers wished to escape the chaos and weakness inevitable from having a great number of independent sovereigns, such as existed here immediately after the revolution. On the other hand, they wished to avoid a highly centralized government. James Wilson feared that the National Government would be made so weak that it would be devoured by the States, but neither he nor those associated with him desired it to be so powerful that the States would be devoured by it. They aimed to establish a safe balance which would equally protect both against dis-union and a centralized autocracy. Critics of their work, who delight to parade the usually safe wisdom, which lags a century after the event, now point out that they might have drawn a stronger Constitution and have averted the civil war. But this is by no means clear even now. A Constitution with a stronger central government would probably not have been ratified at all, or, if ratified, would very likely not have delivered us from civil war. Our ancestors could not legislate partisan passion out of the human breast. Previous generations had entailed the black heritage of slavery upon a great section of the country. It became inevitably the occasion for a furious sectional strife. It is probable, with such a deep-seated and irrepressible cause of irritation, that

there would have been war in any event. If such a cause had not existed, it is altogether probable that the people would have accepted as the more practical one, the theory put forth with immortal eloquence by Webster, that the National Government within the sphere of its constitutional powers was supreme.

The logic of Calhoun, transcendent though it was, led to a barren conclusion from a practical standpoint, for if each State were at liberty to withdraw from the Union at pleasure, the Union as Webster expressed it, would have been but "a rope of sand." So, I think the Civil War was due to another cause than the incompleteness of the work of the Constitution makers. They created an admirable poise, avoiding the weakness of disunion on the one hand, and on the other the destruction of individual liberty, certain to result from a highly centralized government, destined some day to hold sway over hundreds of millions of people, inhabiting vast stretches of the earth's surface. This aspect of our constitutional question is especially important at a time when it seems not unlikely that the National Government may attempt to devour the States.

We are all to be regulated in our business and modes of living by gentlemen sent out from Washington, and the gentlemen sent out from Washington are to be regulated by one man in the White House. Would it be possible to conceive of a more ideal centralized paternalistic government? To illustrate the extent to which this national detective system has grown, Congress at its last session appropriated about nine millions of dollars to inspect various kinds of business, more than five times the amount appropriated for similar purposes ten years ago, or probably a greater sum than was required at that time for the pay and subsistence of all the private soldiers in the army. Were we hopelessly wicked and corrupt a decade ago, or has our wickedness increased so rapidly during that time that this vast army of Federal detectives should be set upon the tracks of the people? And, there are still other proposals for increases of the system, and the end is not yet. How much farther need we go in this direction before we shall range ourselves by the side of Russia and every business man will have a federal inspector at his elbow?

But, if this excessive governmental supervision of the citizen is so necessary, why should it be conducted on so large a scale by the National Government? Is an inspector who feeds at the na-

tional crib, far from the master's eye, likely to be any better than the one acting under local authority? And, by the master, I do not mean the President; he is only a servant, for the people are supposed to be the masters of their government. If we study our history, we shall not find that the Federal inspectors are made of any super-human material. They are made of precisely the same clay as are the agents of local governments, and subject to the same human frailties. Look at the swindles connected with federally inspected banks; at the astounding corruption attaching itself to almost the only railroad built under national auspices; at the horrible disasters upon the sea, due in part to the failure of Federal inspectors to do their duty. I shall not prolong the list. I only allude to these instances to show the baselessness of the assumption that one who holds a Federal commission is infallible, and of the further assumption that the evils now existing in life will all disappear if we shall enter upon a Utopian world, where every breath we draw will be under the direction of some beneficent instrument of the Washington diety. I take it that national office holders are no better and no worse than are the officers of States, but as governmental functions are more and more transferred to the national authority, the number of agents subject to a single jurisdiction is increased amazingly, and the authority exercised by the man at the head of this colossal machine passes all bounds.

There are of course certain great imperial powers that must be exercised by the National Government, but the time-honored functions of the States have as a whole been well administered, and they should be permitted to remain with the States. The people can exercise a closer scrutiny over the conduct of their local agents, and the commission of acts of wrong doing will be more apt to be detected and punished, and hence more apt to be restrained. We have had painful instances of dishonesty in connection with the government of our cities, but it is significant that they have usually been unearthed not by office holders, but by the vigilance and public spirit of private citizens who can get a near view. It was so a generation ago when Tilden and his associates brought Tweed to justice in New York. It is so at this moment when a body of men holding no office are disclosing some startling things in connection with the government of Boston. This most salutary force is

largely wanting when you set up your government upon a stage one thousand miles from those who are governed. Office holders sometimes find each other out, or turn state's evidence, but the most potent agency to secure honest official conduct is the sleepless vigilance of the people.

A great central government exerting its authority in all governmental matters over a vast and scattered population necessarily takes on an autocratic character. The part of each individual in such a government becomes so infinitesimal and diluted that it vanishes almost entirely as an appreciable force. The wide range of powers heretofore exercised under the Constitution by the States gives an opportunity to the individual citizen to bear an appreciable part in actual government. The historian Freeman, in comparing small states with great ones, said that a "small republic develops all the faculties of individual citizens to the highest pitch. The average citizen of such a State is a superior being to the average citizen of a large kingdom. He ranks not with its average subjects, but at the very least with its average legislators." I have given the obvious reason. In a small community resting upon suffrage, which is practically universal, the average citizen takes part in the actual work of government, and is disciplined by it, while in a very large nation he is practically a spectator. In the one case participation in government will beget a facility for it, and dealing with subjects at close range, his practical sense instead of his imagination will be brought into play. But where he is a spectator looking at transactions taking place upon a distant stage, the thing that stages well is the thing that will command his attention. The rotund chest and swelling shoulders of the hero may be only sawdust, but the effect upon the distant onlooker will be the same. He is dealing with things which may or may not be real. The opportunity for deception is great, the chance of detection small. The ideal condition is that provided by our system. We can have the protection, the security and the sense of national pride attending a great nation, and we can at the same time be free in conjunction with those in our immediate neighborhoods to manage our local affairs in our own way, without the intermeddling of an autocrat.

Our vexed constitutional question was settled by the arbitrament of war. What was called the lost cause was stricken down not by superior valor, for that has nowhere been seen among men,



but by the weight of heavier battalions. I think you will agree with me that it was well for us, well for all mankind, that the empire of this continent of ours should not be divided between two great and possibly warring nations and that those who shall hereafter live in the South and in the North shall be citizens of one common country. But the civil war did not destroy the autonomy of the States. After the war had ended the great Chief Justice, himself a conspicuous actor in the struggle, declared from the bench of the Supreme Court that "the Constitution in all its provisions looks to an indestructible union composed of indestructible States." It is no more repugnant to our system for the States to nullify the action of the National Government than for the National Government to usurp the powers of the States. If we shall be true to the system our forefathers believed so vital to liberty, we will maintain the balance which they established between the local and central governments.

The mortal disease of democracies is the demagogue. It is so easy to make the most prosperous people think they are ill-treated and badly off; it is so easy to use the property of a small class to bribe the members of a large class, that unscrupulous politicians in all ages have found a ready means to advance their fortunes under democratic governments. The makers of our Constitution were well aware of this danger, and they made careful provision against the demagogue. They knew that often history condemned what the crowd at the moment applauded. They safeguarded liberty and property, imposed checks against hasty action, so that the people might have time to think and form an opinion worthy of the name, and they carefully distributed power among the three great departments of government. The system has worked admirably.

That was an impressive dictum of Montesquieu, that "there is no liberty if the judiciary be not separated from the legislative and executive powers." The independent judiciary of the United States, standing apart and coldly scrutinizing in the light of the Constitution the action of the other departments, has proven a most effective guardian of liberty.

The House of Representatives, fresh from the people, is sure to voice the immediate popular demand. The Senate, differently constituted, acts with more deliberate reserve, although its efficiency would be increased and its conservatism in no degree lessened if the democratic principle were not so grossly violated

in its composition. The Constitution so invested the President with power at the same time that it decorated him with honor that it satisfied his ambition and sobered him with the weight of great responsibilities. And our Presidents have usually been a great conservative force, and more than once they have not hesitated to step into the cold light of unpopularity if they might thereby advance their country's honor. Sailing before the wind has not been a favorite pastime with American Presidents; their great deeds often have been at the time unpopular. Washington breathed the popular fury when he issued his proclamation of neutrality, but he struck a mighty blow for the independence of our foreign relations. Cleveland heroically braved a widespread sentiment and sacrificed his popularity in order to preserve the standard of value of our money. And when the printing presses were to be set in motion and the national bondholders were to be paid in paper Grant, the silent, inflexible soldier, who was always a hero unless upon dress parade, interposed his veto against inflation. The result of the workings of our institutions has been seen in a progress which has conserved, and while we have made haste slowly we have outstripped all other nations.

Thus the Constitution has safely carried us through the most rapidly moving century the world has ever seen. It has shown itself equal to this great era. How will it ride the tumbling waters of the century that has just dawned? How will it be in the far future when mayhap the Gaul shall insultingly leap upon the ruins of the Capitol and "wasteful wars shall statues overturn"? Whether it shall then endure or be derided and trampled under foot will depend not so much upon the virility of its powers, as upon the integrity and sense of justice of the American people. No constitution can save a nation from itself. To that riddle of the future the wise and venerable Franklin in almost the last words spoken to the convention, after the engrossed copy had been read, gave perhaps the most illuminating answer that can be made. It can, he said, speaking of the Constitution, "only end in despotism, as other forms have done before it, when the people shall become so corrupted as to need despotic government—being incapable of any other."













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